

106 FERC ¶ 61,309
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

San Diego Gas & Electric Company,)	
Complainant)	
)	
v.)	Docket No. EL00-95-045
)	
Sellers of Energy and Ancillary Services Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
Respondents.)	
)	
Investigation of Practices of the California)	Docket No. EL00-98-042
Independent System Operator Corporation)	
and the California Power Exchange)	

ORDER ON MOTION FOR PARTIAL DISMISSAL

(Issued March 26, 2004)

1. On March 25, 2003, Calpine Corporation and its wholly-owned subsidiaries, including Calpine Energy Services, L.P. (Calpine) filed a motion in the above captioned proceedings for Calpine's partial dismissal from the proceedings. Calpine explains that it has reached a comprehensive settlement with the State of California (Settlement Agreement) resolving the State of California's claims against Calpine in these proceedings.

2. The Settlement Agreement is between Calpine, on the one hand, and the Governor of the State of California, acting on behalf of the executive branch of the State of California, the California Electricity Oversight Board (Oversight Board), the California Public Utilities Commission (California Commission), and the People of the State of California by and through the Attorney General (AG) (collectively, the California State Releasing Parties) on the other hand. Calpine states that the Settlement Agreement generally resolves all claims between Calpine and the California State Releasing Parties with respect to long-term contracts entered into between Calpine and the California Department of Water Resources (CDWR) in early 2001. In the Settlement Agreement,

various California entities agree to withdraw with prejudice individual complaints in several proceedings,¹ and the Oversight Board and California Commission agree to release any claims against Calpine to receive refunds from Calpine in the California refund proceedings (Docket Nos. EL00-95-045 and EL00-98-042) or for a remedy for, among other things, sales of power to or from the California Independent System Operator (CAISO), California Power Exchange (Cal PX), or CDWR.

3. Thus, Calpine requests in the instant motion that it be dismissed from the California refund proceedings to the extent that those proceedings direct refunds for power sold by Calpine to CDWR or any other agency of the State of California. Calpine emphasizes that its motion does not seek dismissal of claims that non-settling entities may have in the proceedings and that it does not intend that its partial dismissal would adversely affect any other party. Calpine notes that the CAISO and Cal PX should be directed to include in their compliance filings which calculate refunds any procedures that may be necessary to reduce from the amounts to be refunded by Calpine the amounts for power sold to any California State Releasing Party. In the event the Commission believes such a directive is premature, as was previously found when granting a similar motion for partial dismissal,² Calpine requests that the Commission “confirm that any possible calculations of bilateral obligations between Calpine and the State will not supercede the proposed settlement agreement.”³

Answers

4. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) filed an answer taking no position on the merits of the Settlement Agreement but raising several concerns about the motion for partial dismissal. First, PG&E and Edison request that the Commission clarify that the Settlement Agreement does not compromise their claims in the Refund Proceeding or elsewhere or any other claims that they may be entitled to pursue related to charges that they incurred for power or charges for which they may ultimately be determined to be liable in the Refund Proceeding or elsewhere. Second, PG&E and Edison request that the Commission deny Calpine’s request concerning how the Settlement Agreement will be treated by the

¹ Specifically, Docket Nos. EL02-60-000, EL02-62-000, and EL02-71-000.

² See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services, et al., 101 FERC ¶ 61,391 (2002) (Williams Dismissal); see also, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services, et al., 105 FERC ¶ 61,066 at P 182 (2003) (deferring a decision on how to effectuate Williams’ settlement agreement until after it is filed and evaluated).

³ Calpine motion at 10. See also Calpine motion at 9, n.21 (discussing bilateral sales to CDWR).

CAISO and Cal PX, pending a final determination of cash flow issues in the Refund Proceeding. Third, they ask that the Commission clarify that granting the motion does not constitute a ruling on any other provisions of the Settlement Agreement.

5. Automated Power Exchange, Inc. (APX) responded to the motion, stating that it does not oppose the Settlement Agreement. However, APX expresses concern that, if it is held primarily liable for all transactions that it scheduled in the markets of the CAISO, acting as scheduling coordinator for Calpine, then APX could be unable to recover amounts that Calpine owes to APX as a result of Calpine's use of APX as an intermediary in the California markets. APX urges that, if the Commission grants the motion, the Commission should clarify that nothing relieves Calpine of liability it may have to entities that are not parties to the Settlement Agreement, including any liability to APX arising from Calpine's sales scheduled by APX.

6. The Northern California Power Agency (NCPA) also filed an answer stating that it does not oppose a limited dismissal of Calpine but requesting several clarifications. NCPA notes that the Settlement Agreement refers to power sold only to the California State Releasing Parties, while the motion is more ambiguous, referring to CDWR or "any other agency of the State."⁴ Thus, NCPA requests that the Commission clarify that neither NCPA (which is a joint action agency established under the laws of the state of California) nor any of its members are construed to have settled any rights in the Refund Proceeding or any other proceeding. NCPA also cautions that changes in the CAISO and Cal PX settlements process may have unforeseen consequences on other market participants, and seeks clarification that partial dismissal of Calpine's refund liability will be implemented in a way that will not harm the financial position of NCPA and its members in the Refund Proceeding.

Discussion

7. We will grant the motion and dismiss the captioned complaints against Calpine with prejudice as to the power sold by Calpine to the California State Releasing Parties, as described and conditioned in the motion and as clarified in this order. This action will not affect in any way the amount of refunds that Calpine may owe to any non-settling parties, including PG&E and Edison, APX, and NCPA and its members, nor is it intended to affect the financial position of any non-settling party.

8. The CAISO will need to include in its compliance filing the procedures and/or calculations used to reflect settlements such as Calpine's.⁵ The CAISO described the

⁴ Calpine motion at 7.

⁵ In addition, there will need to be adjustments to reflect the partial dismissal of
(continued...)

process and timing for calculating refunds in a status report filed on February 9, 2004 in Docket No. ER03-746-000. Currently, the CAISO expects to make two compliance filings, one at the conclusion of the preparatory re-run phase, and a second at the end of the financial phase, which will involve the calculations necessary to account for “who owes what to whom.”⁶ The CAISO plans to include offsets relating to adjustments for global settlements in the latter compliance filing. We will direct the CAISO to describe explicitly how the offsets are calculated and how the final run has been modified to reflect the settlements. Parties will have an opportunity to comment on or protest those offsets at that time; however, we encourage participants to address any concerns related to accounting for the global settlements on an ongoing basis as the CAISO proceeds with this process.⁷

9. Regarding PG&E and Edison’s final point, we will clarify that our granting this motion does not constitute a ruling on any other provisions of the Settlement Agreement. We construe Calpine’s motion to be only referring to power sold to the California State Releasing Parties, as provided in the Settlement Agreement, rather than to any agency of the State of California which could be read to include certain members of NCPA.

10. To address APX’s specific concern, we will clarify that, to the extent any liability is imposed on APX in the Refund Proceeding in connection with Calpine’s sales,⁸ its liability should be adjusted to reflect the elimination of the Calpine refund amounts as to the power sold by Calpine to the California State Releasing Parties.

Williams and El Paso from this proceeding. See Williams Dismissal; San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services, et al., 106 FERC ¶ 61,005 (2004) (partial dismissal of El Paso from Docket No. EL00-95-045, et al.). To the extent these adjustments affect Cal PX calculations, this should be reflected in the Cal PX compliance filing that the PX will submit concerning its resettlements and allocation of refund liability.

⁶ February 9 Status Report at 7.

⁷ See California Independent System Operator Corp., 106 FERC ¶ 61,099 at P 19, 21 (2004) (discussing the airing and consideration of any concerns about the settlement re-runs in an orderly and transparent manner).

⁸ See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services, et al., 105 FERC ¶ 61,066 at P 159-172, reh’g pending (finding that sellers who used APX’s services should be liable for refunds in the proceeding, but that joint and several liability is appropriate for recovery of refund liabilities where data for apportionment is insufficient).

The Commission orders:

Calpine's motion for partial dismissal from the Refund Proceedings in Docket Nos. EL00-95-045 and EL00-98-042 as to power sold by Calpine to the California State Releasing Parties is hereby granted.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas
Secretary.